

U.S. Department of Labor

Office of Administrative Law Judges  
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Issue date: 12Sep2001

Case No.: 2001-CLA-9

In the Matter of:

UNITED STATES DEPARTMENT OF LABOR

Plaintiff

v.

INDUSTRIAL SYSTEMS LIMITED, a Corporation  
and

GREGORY SCHAMS, an Individual

Respondents

Before: RUDOLF L. JANSEN  
Administrative Law Judge

DECISION AND ORDER APPROVING CONSENT FINDINGS

This proceeding arises under Section 16(e) of the Fair Labor Standards Act of 1938, as amended, (29 U.S.C. § 216(e)), and the regulations issued thereunder which are found at 29 C.F.R. Parts 579 and 580. A civil money penalty in the amount of \$5,962.50 was assessed against Respondents as a result of the employment of three minors in violation of the child labor provisions of Section 12 of the Act (29 U.S.C. § 212). A timely exception to the assessed civil money penalty was filed by the Respondents causing the matter to be referred to this office for hearing.

Upon reconsideration of the amount of penalties assessed for the employment of the three minors, Plaintiff has now modified the notice of assessment of penalty by reducing the penalty to \$4,500.00. The Respondents have now withdrawn their exception to the assessment of the \$4,500.00 civil money penalty as amended, and agree to the penalty asserted as final and binding. Respondents have tendered full payment of the \$4,500.00 penalty to the Plaintiff.

On August 31, 2001, the parties filed Consent Findings which were signed by both parties and a request was made that an order be issued disposing of this case by way of application of 29 C.F.R. § 18.9 of the Rules of Practice and Procedure for Administrative Hearings Before the Office of Administrative Law Judges. Absent a deferral or supervised settlement negotiations, the Administrative Review Board has concluded that our Rules of Practice and Procedure and specifically § 18.9 do not apply. Indiana Department of Workforce Development v. U.S. Dep't. of Labor, 97-JTP-15, Final Order Dismissing Complaint, (ARB Dec. 8, 1998). No request for deferral or Administrative Law Judge supervision of settlement negotiations has taken place in this matter.

Program regulations outline the procedure for assessing and contesting civil money penalties under the Fair Labor Standards Act. 29 C.F.R. Part 580, § 580.7(a) contains a specific directive for use of the Department's procedural rules. That section reads as follows:

Except as specifically provided in this subpart, and to the extent they do not conflict with the provisions of this subpart, the Rules of Practice and Procedure for Administrative Hearings Before the Office of Administrative Law Judges established by the Secretary at 29 C.F.R. Part 18 shall apply to administrative proceedings under this subpart.

There exists no specific exclusion for use of our rules nor do the Part 18 Rules conflict with any provisions of Part 580 and therefore this regulation compels the use of the Part 18 procedural rules in disposing of this case. That procedure has been followed in many Fair Labor Standard Act penalty cases for a long period of time and I choose to continue its usage here notwithstanding the decision of the Administrative Review Board noted above.

Upon review of the record, the Consent Findings are approved. The agreement constitutes full and final resolution of this matter. IT IS ORDERED that:

1. This Order shall have the same force and effect as an order made after a full hearing;

2. The entire record upon which this Order is based shall consist solely of the Order of Reference and the Consent Findings;
3. Any further procedural steps before the Office of Administrative Law Judges are hereby waived; and,
4. All rights to challenge or contest the validity of this Order which has been entered into in accordance with the Consent Findings are hereby waived.

IT IS FURTHER ORDERED that this matter is hereby dismissed. This Decision constitutes the Final Order of the Secretary unless an appeal is taken. 29 C.F.R. § 580.12(e).

A  
RUDOLF L. JANSEN  
Administrative Law Judge